

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL N. KELSEY,
Plaintiff,

v.

CHRISTOPHER SHERMAN, individually and
in his official capacity; KATHY HOCHUL,
individually and in her official capacity; NEW
YORK STATE BOARD OF PAROLE; NEW
YORK STATE DOCCS POUGHKEEPSIE
BUREAU; ST. LAWRENCE COUNTY
DISTRICT ATTORNEY; and ATTORNEY
GENERAL LETITIA JAMES,
Defendants.
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ORDER

22 CV 1934 (VB)

1-10-24
Copies Mailed/Faxed
Chambers of Vincent L. Briccetti

By Order dated December 22, 2023, the Court dismissed, without prejudice, plaintiff's claims against defendants NYS DOCCS, Attorney General Letitia James, and the NYS Board of Parole because plaintiff failed to file waivers or proofs of service as to these defendants on the docket within the Rule 4(m) deadline. (Doc. #38). The Court noted that plaintiff, a former attorney, was given multiple opportunities over several months to comply with Rule 4 and effect service on the newly named defendants. (See Docs. ##28, 32, 34).

On December 28, 2023, plaintiff sent a letter to the Court in which he makes several allegations about his attempts to effect service and asks "that the Court will make exception and timely receive proof of service." (Doc. #39). Plaintiff also notes the Appellate Division, Third Department has vacated his "SORA assessment" and "remanded it for further proceedings." (Id.) Plaintiff claims he sent a copy of the appellate decision to this Court and "requested permission to amend the petition a second time." (Id.). However, the docket reflects that this Court received no such filing.

The Court construes plaintiff's December 28, 2023, letter as a request for (i) reconsideration of the Court's December 22 Order dismissing the unserved newly named defendants, and (ii) leave to file a second amended complaint.

For substantially the reasons set forth in Assistant Attorney General Schulman's January 8, 2024, letter (Doc. #45), plaintiff's request for reconsideration of the December 22 Order is DENIED. Accordingly, the Court will not reinstate plaintiff's claims against NYS DOCCS, Attorney General Letitia James, or the NYS Board of Parole.

Plaintiff's request for leave to file a second amended complaint is also DENIED. See Colliton v. Bunt, 709 F. App'x 82, 83–84 (2d Cir. 2018) (summary order). The Court can discern no reason why the Appellate Division's decision regarding plaintiff's sex offender designation warrants another amendment of plaintiff's complaint in this matter, at this stage. See People v. Kelsey, 221 A.D.3d 1299 (3d Dep't 2023).

Lastly, on January 4, 2024, defendant St. Lawrence County District Attorney filed a motion to dismiss the amended complaint. (Doc. #40). Plaintiff is reminded that his opposition to the motion is due by January 18, 2024.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: January 10, 2024
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge